United Brotherhood of Carpenters & Joiners of America, Millwrights Local Union No. 1476 of Lake Charles, Louisiana *and* Lake Charles District, Associated General Contractors of Louisiana, Inc. Case 15-CB-2667

27 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 28 September 1983 Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief[1] and the Charging Party filed a brief in response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified and to adopt the recommended Order as modified.

Although we agree with the judge that the Respondent violated Section 8(b)(3) of the Act, we do so only for the reasons set forth below.

The Respondent and the Charging Party participated in five bargaining sessions during the spring and summer of 1982 in an attempt to negotiate a new collective-bargaining agreement. Their most recent contract had expired on 30 April 1982. The judge found that at the fifth session on 1 July the parties reached an agreement on the reporting time and minimum pay provision of a new contract. The judge also found that on 23 August the parties reached agreement on an entire contract which, when printed, erroneously omitted the weather clause contained in the 1 July reporting time and minimum pay proposal.[3] The judge concluded that the Respondent violated Section 8(b)(3) by refusing to correct the printed contract to conform it to the 1 July reporting time proposal. We disagree.

Both parties were fully aware at the 1 July bargaining session that their agreement on several extant proposals would be submitted to the Respondent's members for ratification.[4] Therefore both parties knew that they had negotiated only a tentative contract agreement which would mature into a final binding contract only upon ratification by the Respondent's members. The Respondent's members voted against ratification shortly after 1 July.

Furthermore, it seems implausible that the Charging Party considered the 1 July agreement to be a final contract when it chose to meet with the Respondent again on 23 August for further negotiations. If the parties had recognized the 1 July agreement as a final contract the later negotiation session on 23 August would have served no purpose.

The agreement reached on 1 July obligated the Respondent only to conduct a ratification vote on the proposed contract and to then abide by the proposed contract should it be ratified. Ratification failed so none of the 1 July proposals was binding on the Respondent. Accordingly we cannot agree that the Respondent violated Section 8(b)(3) of the Act by refusing to revise the 23 August contract to conform it to the 1 July reporting time and minimum pay proposals.

As noted, the parties engaged in further contract negotiations on 23 August. At the start of this session the Charging Party's negotiating committee chairman provided the Respondent's negotiators a full contract proposal. This proposed contract contained those provisions on which both parties had already reached tentative agreement on 1 July and a few previously undiscussed items.

The Charging Party unknowingly deleted the weather clause limitation from the article XIII draft it submitted to the Respondent on 23 August. As drafted, article XIII guaranteed a laid-off employee a minimum of 4 hours' pay regardless of the layoff's cause. When the parties reached article XIII during discussion of the proposed contract on 23 August no one mentioned the omission. The

[1] The Respondent has moved to dismiss the complaint on the ground that the matter is now moot by virtue of subsequent negotiations between the parties. The General Counsel has opposed the motion. The parties' signing of a negotiated agreement does not render a Board order moot. Accordingly, the motion is hereby denied.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Art. XIII of the proposed contract set forth the reporting time and minimum pay provisions. Art. XIII of the parties' expired contract and the art. XIII proposal the Charging Party previously offered during the 1982 negotiations (including the 1 July proposal) required as a general rule that the Charging Party pay an employee who reports for work on a scheduled workday a minimum of 4 hours' pay regardless of whether the Charging Party has any work for him. It also contained a weather clause which specifically limited the Charging Party's wage obligations when it laid off an employee due to weather or to other causes beyond its control. In such circumstances the Charging Party was required to pay only for time already worked that day, but not less than 2 hours' pay.

[4] The Charging Party's negotiating committee chairman conceded that he was informed at the 1 July session by the Respondent's business agent (who was a member of the Respondent's negotiating committee) that their agreement would be submitted to the Respondent's members for ratification. This submission of the contract agreement to member ratification appears to be the Respondent's standard procedure. We note that a later agreement reached by the parties on 23 August 1982 was also submitted to a ratification vote by the Respondent's members.

only comment on article XIII the Respondent offered was that which it made regarding those articles on which they had already reached agreement, which was "No questions."

Later during the same negotiation session the parties reached an agreement on the entire contract and signed the contract's last page. The Respondent's members ratified the contract shortly afterwards. Sometime thereafter the Respondent's business agent Winn telephoned the Charging Party's district manager Sibley and asked him how he interpreted the minimum pay provision of article XIII as set forth in the new contract. Both had participated in the negotiations. When they disagreed on the interpretation, Sibley read article XIII and for the first time realized the weather clause had been omitted. Sibley then told Winn that the omission was a mistake and that the weather clause should be in the contract. Winn responded that he "had a signed contract." The Respondent refused the Charging Party's later request made on or about 15 November 1982 to bargain concerning the reporting time and minimum pay provisions of article XIII.

The Board has reserved the remedy of rescission for unilateral mistake to those instances where the mistake is so obvious as to put the other party on notice of an error.[5] We find that this case presents such an instance.

The deletion of the weather clause from article XIII not only represented a change from the parties' preceding contract, but also from all article XIII proposals the Charging Party had offered during the 1982 negotiations. Furthermore, the article XIII draft offered the Respondent a significant and costly new benefit. It is implausible that when the parties reached article XIII during negotiations on 23 August and the Charging Party's negotiators said nothing regarding the apparent offer of this new benefit that the Respondent did not realize that the Charging Party was unaware of the omission. We find the Respondent knew or should have known of the Charging Party's mistake.

Accordingly, we conclude that the parties did not reach agreement on the article XIII proposed on 23 August, and that the Respondent's refusal of the Charging Party's request to bargain concerning the reporting time and minimum pay provisions violated Section 8(b)(3) of the Act.

AMENDED CONCLUSIONS OF LAW

1. Delete Conclusions of Law 5, 6, 7, 8, and 9.

2. Insert the following as Conclusions of Law 5, 6, and 7 and renumber the remaining Conclusion of Law.

"(5) The Charging Party agreed to the reporting time and minimum pay provisions of the article XIII draft proposed on 23 August 1982 based on a unilateral mistake of which the Respondent was or should have been aware.

"6. Since on or about 15 November 1982, and thereafter, the Respondent has failed and refused to bargain with the Associated General Contractors of Louisiana concerning reporting time and minimum pay provisions.

"7. By its refusal to bargain with the Associated General Contractors of Louisiana the Respondent has violated Section 8(b)(3)."

AMENDED REMEDY

Having found that the Respondent violated Section 8(b)(3) of the Act, we shall order the Respondent to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that the Respondent, on request, bargain with the Associated General Contractors of Louisiana concerning reporting time and minimum pay provisions. Additionally, we shall order the Respondent to reimburse Associated General Contractors of Louisiana members for any payments they made under protest that they would not have incurred under article XIII of the parties' collective-bargaining agreement which expired on 30 April 1982.[6] Interest shall be computed and paid on any such reimbursement in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, United Brotherhood of Carpenters & Joiners of America, Millwrights Local Union No. 1476 of Lake Charles, Louisiana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain with Lake Charles District, Associated General Contractors of Louisiana, Inc., and its employer members concerning reporting time and minimum pay provisions.

(b) Engaging in any like or related conduct in derogation of its statutory duty to bargain.

[5] *Globe-Union*, 245 NLRB 145 (1979); *Apache Powder Co.*, 223 NLRB 191 (1976). See also 17 Am.Jur.2d, § 1146 at 493–494; 13 Williston, Contracts § 1573 at 490 (1970).

[6] *Plumbers Local 420 (Paragon Mechanical)*, 254 NLRB 445 (1981); *Graphic Arts Local 280 (James H. Barry Co.)*, 235 NLRB 1084 (1978), enfd. 596 F.2d 904 (9th Cir. 1979); *Longshoremen ILWU Local 17 (Los Angeles By-Products)*, 182 NLRB 781 (1970), enfd. 451 F.2d 1240 (9th Cir. 1971).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request meet and bargain with Lake Charles District, Associated General Contractors of Louisiana, Inc., and its employer members, concerning reporting time and minimum pay provisions.

(b) Reimburse Lake Charles District, Associated General Contractors of Louisiana, Inc. and its employer members for any payments made under protest which would not have been incurred under article XIII of the collective-bargaining agreement which expired on 30 April 1982.

(c) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Promptly mail to the Regional Director for Region 15 signed copies of the notice for posting by Lake Charles District, Associated General Contractors of Louisiana, Inc., and its employer members, if willing, at places where notices to its employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Lake Charles District, Associated General Contractors of Louisiana, Inc. and its employer members concerning reporting time and minimum pay provisions.

WE WILL NOT engage in any like or related conduct in derogation of our statutory duty to bargain.

WE WILL on request meet and bargain with Lake Charles District, Associated General Contractors of Louisiana, Inc., and its employer members, concerning the reporting time and minimum pay provisions.

WE WILL reimburse, with interest, Lake Charles District, Associated General Contractors of Louisiana, Inc., and its employer members, for any payments made under protest which would not have been incurred under article XIII of the collective-bargaining agreement which expired on 30 April 1982.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, MILLWRIGHTS LOCAL UNION NO. 1476 OF LAKE CHARLES, LOUISIANA

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. A charge was filed in Case 15-CB-2651 on November 17, 1982,[1] by Lake Charles District, Associated General Contractors of Louisiana, Inc. (AGC or the Charging Party), alleging that United Brotherhood of Carpenters & Joiners of America, Millwrights Local Union No. 1476 of Lake Charles, Louisiana, Inc. (Respondent or Millwrights) refused to include in a collective-bargaining agreement all contract provisions which had been agreed on during negotiations, in violation of Section 8(b)(3) of the National Labor Relations Act (the Act). This charge was dismissed on November 1 by the Regional Director for Region 15 on the ground that there was insufficient evidence to establish a "meeting of the minds" on the disputed contract provision, pertaining to reporting time.

The current charge was filed by AGC on November 17, alleging that the Millwrights had refused to bargain over terms and conditions of employment, in violation of Section 8(b)(3). A complaint issued on December 13, alleging that the Millwrights had refused to bargain with AGC concerning the reporting time and minimum pay provisions of a proposed collective-bargaining agreement, in violation of Section 8(b)(3). A hearing was conducted before me on these matters in Lake Charles, Louisiana, on February 22, 1983. On the entire record, including briefs filed by Respondent and the Charging Party, and a statement of position by the General Counsel, and on my observation of the demeanor of the witnesses, I make the following

[1] All dates are in 1982 unless otherwise specified.

FINDINGS OF FACT

I. JURISDICTION

The pleadings as amended at the hearing establish that AGC is a multiemployer association composed of various employers engaged in the construction and maintenance industry, existing in part for the purpose of representing its members in collective bargaining with Respondent. The amended pleadings further establish that three of AGC's members have their offices and places of business in Lake Charles, Louisiana, and individually purchased and received at such places, within the 12-month period preceding issuance of the complaint, goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana. The amended pleadings further establish, and I find, that AGC's employer members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The pleadings establish and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Summary of the Evidence*

1. The bargaining history and the reporting time provision

The parties had previously entered into collective-bargaining agreements, beginning in the 1950s. The last contract expired on April 30, 1982. That agreement provided that an employee reporting for work, for whom no work was available, would receive 2 hours' pay unless he had previously been notified not to report. If work was performed, the employee received not less than 4 hours' pay, and, if more than 4 hours of work were performed, a full day's pay. In the event that weather conditions prevented any work, the employee would receive 2 hours' pay provided he remained at the jobsite for 2 hours. If work was interrupted by inclement weather, the employee was paid for time actually worked but not less than 2 hours.[2]

There were five bargaining sessions concerning a new agreement, two in April before the old contract expired and three thereafter, the last on August 23. The principal representative for AGC was Joe T. Miller, for 30 years chairman of its labor negotiation committee. He was assisted by Samuel J. Sibley, AGC's district manager. The Millwrights was represented by members of a negotiating committee, including Dallard G. Ledoux, union president, and Elvin O. Winn, business agent and financial secretary.

The witnesses disagreed as to the bargaining history and procedure. According to AGC District Manager Sibley, each session began with a recapitulation of items which had been agreed on. These were not discussed in the following sessions, which dealt only with items on which there had been no agreement. Miller said that AGC started with a proposed master agreement, as to which it was seeking agreement from the other trades. As changes were negotiated in the master agreement, AGC gave the union representatives "separate sheets of refinements" as to the items agreed on. Previously agreed-upon items were not discussed in subsequent sessions. These were then incorporated into a final document on August 23, plus some new items which had not been discussed until that date.

Union President Ledoux, however, denied that there was any agreement on any provisions prior to the last meeting on August 23. The entire contract was read over by the parties on that date, and it was only then that agreement was reached on each provision. For the most part, this was achieved by Miller's asking questions such as "Any questions on this article?" or "No questions?"

Miller testified that agreement was reached between the parties on a reporting time provision at a bargaining session on July 1. AGC presented a proposal for reporting time pay which was similar to that in the expired contract. Like the prior contract, the proposal placed restrictions on this right in the event of inclement weather and other events beyond the employer's control. The inclement weather proposal was contained in the third and last paragraph of the proposal.[3] According to Miller, he told the union representatives on July 1 that this proposal had been accepted by four other trades.[4] Winn said that he would "sell" the proposal to the membership. District Manager Sibley testified on cross-examination by Respondent that the "document itself was handed across the table to the Union and this is what we agreed to, verbatim." Asked the position of the union representatives, Sibley replied that he said, "We are in agreement."

Business Agent Winn recalled that AGC presented a reporting time proposal, but could not remember the date. Winn averred that he replied that the Millwrights would accept if the other trades did so, but added that this condition referred to more than just the reporting

[2] Jt. Exh. 7, art. XI.

[3] The proposal reads as follows:

ARTICLE 13. REPORTING TIME AND MINIMUM PAY

(a) Should an employee be required by the Employer to report for work and not be given work, he shall receive two (2) hours straight time pay, unless notified on the previous day not to report. Employee must remain on the job two (2) hours to collect this pay.

(b) An employee starting to work Monday through Friday inclusive shall receive not less than four (4) hours pay, and if such employee is required to continue on the second period of the shift, he shall receive not less than eight (8) hours pay.

The provisions of paragraph (b) shall not be applicable where the employee is laid off by reason of bad weather, breakdown of machinery or any other cause beyond the direct control of the Employer, in which event payment will be made for actual time worked, but not less than two (2) hours. An employee receiving pay for four (4) hours or eight (8) hours under this provision may be required to remain on the job and perform work under his jurisdiction, until he has been on the job the number of hours paid. [Jt. Exh. 5.]

[4] The Brick Masons, the Cement Masons, the Ironworkers, and the Carpenters. Two of the contracts, those with the Teamsters and the Operators (Plasterers), did not include weather clauses. The basic reason, according to Miller, was the fact that their prior contracts did not have such clauses.

time proposal. Miller, however, denied that there was any condition attached to Winn's agreement. Ledoux was shown the AGC proposal and said that it was "vaguely familiar." He denied that the Millwrights accepted it, and asserted that he did not see the language of the reporting time proposal until the last session on August 23.

The reporting time proposal was not discussed by the parties in any of the bargaining sessions after July 1.

2. The final bargaining session

During the final session on August 23, Miller presented to the Millwrights what purported to be a contract containing provisions already agreed upon plus some additional proposals. There was a variance between the reporting time provision in this document and the provision which, according to AGC, had been agreed upon during the July 1 session.[5] The AGC representatives testified that they were unaware of this variance at the time.

According to Miller, the Millwrights representatives caucused and compared the proposed agreement with the Ironworkers agreement, which AGC had executed with that union on July 16. The reporting time provision of the Ironworkers agreement was identical with the proposal which, AGC asserts, the Millwrights had accepted on July 1.[6] Miller said that he was surprised to learn that the Millwrights had a copy of the Ironworkers' agreement, since the latter had just been printed. After the caucus, the Millwrights representatives showed Miller a list of the variations between the Ironworkers' contract and their proposed agreement, and requested discussion. However, this list of variations did not contain a reference to the reporting time provision.

The parties signed the final page of the document without reading it carefully. Later, the Millwrights' negotiating committee studied the final document, but only to see whether there was an omission injurious to the Millwrights, according to Winn. The business agent said that he thought AGC would similarly protect themselves. The document was presented to the union membership, which accepted it.

3. Winn's conversations with Sibley

A short time later, business agent Winn called AGC District Manager Sibley, and asked for a copy of the contract. Sibley replied that it was at the printer. Winn then called the printer, obtained one copy, and made 300 copies of this document. He then called Sibley a second time, about August 31.[7] According to the district manager, Winn asked him how he interpreted the reporting time provision, and Sibley repeated the question to Winn. The business agent then gave his interpretation, which Sibley said was incorrect because there was no weather provision. Winn denied that there was a weather clause in the contract. Sibley then read article 13 for the first time, and discovered that Winn was right. According to the district manager, he then told Winn that the parties had intended to include the weather clause, and that it should be in the agreement. Sibley averred that Winn did not deny this, but merely replied that the Millwrights had "a signed contract," and that any further discussion would have to be with the union attorney. After this conversation, Sibley called the printer and discovered that the Millwrights did have a signed copy of the contract.

In his pretrial affidavit, Winn denied that there was any discussion of reporting time after the bargaining sessions (G.C. Exh. 3). However, on cross-examination he corroborated Sibley's version of this conversation. Winn testified that the district manager told him, "Don't you know that's not what was negotiated?" Winn replied, according to his own testimony, "It's written in the contract and I have a contract. That's it." When Sibley denied that Winn had a signed copy, the business agent replied that he had 300 copies.

4. Miller's meeting with Winn

Sibley informed Miller of these events, and the latter called Winn on September 3 and requested a meeting. The business agent came to Miller's office, and was told that the subject of discussion was "the mistake in the Reporting Time." "I was afraid of that," Winn replied according to Miller.

Miller then pointed out that the clause in the written contract was not the one which had been agreed on "across the bargaining table." He observed that similar mistakes had occurred in the past, and had been corrected. Winn initially said there was nothing he could do about it. The contract had been presented to the membership, Winn had consulted his attorney, and he had a "valid written contract." Winn then suggested that he might be able to do something if AGC would grant the employees a tool allowance. Miller rejected this proposal, and the conversation ended. The AGC representative called Winn on September 9, and was told that the Millwrights could not change the contract.

Winn did not deny any of the details in Miller's testimony. In fact, he admitted that he had the conversation and told Miller that he would take article 13 back to the membership for possible correction if AGC would "offer something," such as a tool allowance. Winn justified this on the ground that the Union had attempted to obtain a tool allowance in the negotiations.

[5] Pars. (a) and (b) of art. 13, as set forth in the written contract, are identical with those in the July 1 proposal, except that the word "employee" in the last sentence of par. (a) becomes "employees," and the paragraph designations are capitalized. Supra, fn. 3. The last paragraph, however, is different. The first sentence of the third paragraph in the July 1 proposal is omitted, and the paragraph reads: "An employee receiving pay for four (4) hours or eight (8) hours under this provision may be required to remain on the job and perform work under his jurisdiction, until he has been on the job the number of hours paid." (Jt. Exh. 11, art. 13.)

[6] Jt. Exh. 6, art. 13. Supra, fn. 3.

[7] Winn's testimony shows that there were two conversations about the contract with Sibley, the first one in which he asked for a copy, and the second one in which he discussed art. 13.

5. Subsequent communications

On September 15, Sibley wrote Winn asking for correction of the "inadvertent error." The letter noted that AGC would pay wages under the allegedly erroneous clause only "under protest" (Jt. Exh. 4). The union counsel answered the next day, stating that the agreement was "clearly stated in writing" (Jt. Exh. 10). On November 8, after the Regional Director for Region 15 had dismissed the charge in Case 15-CB-2651, Sibley wrote Winn asking for bargaining on reporting time and minimum pay (Jt. Exh. 3). As indicated, this was followed on November 17 by the filing of the current charge.

B. *Factual Analysis*

I credit the testimony of Miller and Sibley as to the bargaining procedure, i.e., that the parties reached agreement on certain provisions, and then passed on to new issues without further discussion of the agreed-upon items. Ledoux's testimony denying this is contrary to normal bargaining procedure and is implausible. His assertion that he did not see the reporting time provision until the last bargaining session is incredible.

Miller's and Sibley's testimony as to the agreement on July 1 was detailed and believable. "We are in agreement," the union representative said according to Sibley. Winn's memory of the July 1 session was less precise than those of the AGC witnesses—he could not remember the date—and his version is equivocal. Thus, although he suggested that his agreement to the reporting clause was conditioned on its acceptance by the other trades, he expanded the condition to additional contract matters. Winn and Ledoux were less believable witnesses than Miller and Sibley, and I credit the AGC's version of the July 1 bargaining session.

An inference that the parties reached agreement on July 1 concerning a reporting clause with a weather provision is buttressed by the fact that reporting time was not discussed after the July 1 bargaining session. As noted, only unresolved matters were brought up at each succeeding session, and the parties' failure to discuss reporting time suggests that the matter had already been resolved. Such inference is further supported by the fact that in Winn's subsequent conversations with Miller and Sibley he failed to deny their assertions that there *had* been agreement on a weather clause, and that the printed contract erroneously failed to include it. Winn's final position simply was that he had a signed contract, but that he might be able to change it if AGC would grant something the Millwrights had been unable to get in negotiation (a tool allowance).

For these reasons I find that the parties reached agreement on July 1 with respect to a reporting time provision with a weather clause, and that that agreement is set forth in Joint Exhibit 5, supra at footnote 3. I also conclude that Winn was well aware of the mistake in the printed contract. This is evidenced by his telephone call to Sibley for the purpose of discussing only the reporting time clause, and by his failure to deny that there was a mistake in the printed contract.

C. *Legal Analysis*

Section 8(d) of the Act defines collective bargaining in part as "the execution of a written contract incorporating any agreement reached if requested by either party," and it is settled law that an employer commits an unlawful refusal to bargain violative of Section 8(a)(5) by refusing to do so. *Georgia Kraft Co.*, 258 NLRB 908 (1981), enfd. 696 F.2d 931 (11th Cir. 1983). This is true despite the contention that there was mutual mistake [*Cutter Laboratories*, 265 NLRB 577 (1982)], or that there was no meeting of the minds [*Granite State Distributors*, 266 NLRB 457 (1983)]. The same principles have been applied to unions, where refusal to sign a side letter on which the parties had agreed was found to be violative of Section 8(b)(3). *Hospital Employees (Episcopal Hospital)*, 241 NLRB 270 (1979).

I see no meaningful distinction between refusal to execute a contract which had been agreed on and refusal to correct an erroneous contract so as to conform it to the real agreement of the parties. In both cases there is a failure to comply with the mandate of Section 8(d) of the Act. I also note that AGC did not voluntarily comply with the erroneous reporting time provision. Rather, it made payments thereunder only "under protest."

I am aware that the complaint does not allege failure to execute an agreement, and that the charge in Case 15-CB-2651 making a similar allegation was dismissed by the Regional Director. However, the General Counsel submitted a statement in which she advanced "no objection to the issuance of a broader remedy" if the evidence established a meeting of the minds on July 1 concerning the reporting time provision. Moreover, Respondent's counsel stated on the record that he would not claim surprise were I to find that there had been such an agreement between the parties. As Respondent's counsel put it, this had clearly been the position of AGC's counsel. Taking into consideration these statements of the parties, and the fact that the issue was fully litigated, I find that Respondent Union, by its refusal to comply with the Charging Party's request to correct the printed contract so as to conform the reporting time provisions to the true agreement of the parties, and by maintenance of the agreement in its erroneous form, thereby engaged in a refusal to bargain violative of Section 8(b)(3) of the Act.

In accordance with my findings above and the entire record, I make the following

CONCLUSIONS OF LAW

1. Lake Charles District, Associated General Contractors of Louisiana, Inc. is a multiemployer association composed of employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Brotherhood of Carpenters & Joiners of America, Millwrights Local Union No. 1476 of Lake Charles, Louisiana, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeyman and apprentice millwrights employed by employer-members of the AGC in Lake Charles, Louisiana, and other locations in southwest Louisiana over which Respondent has jurisdiction consti-

tute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, Respondent has been the authorized collective-bargaining representative of a majority of the employees employed by employer-members of the AGC in Lake Charles, Louisiana, and other locations in southwest Louisiana in the appropriate unit described above, and, by virtue of Section 9(a) of the Act, is the exclusive representative of all employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. About July 1, 1982, the parties reached agreement on a reporting time and minimum pay provision of a new contract, which contained a weather clause.

6. About August 23, 1982, the parties reached agreement on the entire contract, and caused such agreement to be printed with a reporting time provision which erroneously omitted the weather clause which had been agreed on.

7. About August 31, 1982, and thereafter, AGC requested, and Respondent refused, to correct the printed contract so as to conform it to the actual agreement of the parties.

8. AGC thereafter adhered to the erroneous reporting time provision of the contract only under protest.

9. By its refusal to comply with AGC's request to correct the printed contract, and by its maintenance of said agreement in erroneous form, Respondent thereby engaged in a refusal to bargain violative of Section 8(b)(3) of the Act.

10. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the purposes of the Act. Thus, I shall recommend that Respondent, on request by AGC, be ordered to correct the current contract between the parties so as to conform the reporting time provision to the language set foth in footnote 3 of this decision.

The record does not disclose to what extent, if any, AGC members actually made wage payments under the erroneous reporting time provision. In cases where employers have made unjustified expenditures after similar violations of Section 8(b)(3), the Board with judicial approval has considered a make-whole remedy to appropriate. "If a party who unlawfully refuses to bargain is permitted to retain the fruits of unlawful action, the Act is rendered meaningless, and defiance of the Board's orders is encouraged."[8] Accordingly, I shall recommend that Respondent be ordered to reimburse AGC members for any payments they may have made which would not have been made had the agreed-upon weather clause been a part of the reporting time provision. Interest shall be computed and paid on any such reimbursement in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).[9]

I shall also recommend that Respondent be ordered to post appropriate notices.

[Recommended Order omitted from publication.]

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[8] *Plumbers Local 420 (Paragon Mechanical)*, 254 NLRB 445 (1981); *Graphic Arts Local 280 v. NLRB*, 596 F.2d 904 (9th Cir. 1979), enfg. 235 NLRB 1084 (1978). See also *Teamsters Local 334 (Halle Bros. Co.)*, 253 NLRB 1090, 1092 (1981), revd. on other grounds 670 F.2d 855 (9th Cir. 1982).

[9] *Teamsters Local 334 (Halle Bros. Co.)*, ibid., fn. 2.

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